

**Securities Act
(Fonterra Co-operative Group Limited)
Exemption Notice 2012**

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- Title**
This notice is the Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2012.
- Commencement**
This notice comes into force on 12 March 2012.
- Expiry**
This notice expires on the close of 28 February 2017.



4 Interpretation

- (1) In this notice, unless the context otherwise requires, —
- Act** means the Securities Act 1978
- capital notes** has the same meaning as in section 5(1) of the Dairy Industry Restructuring Act 2001
- Fonterra** means Fonterra Co-operative Group Limited
- Fonterra group** means Fonterra and its subsidiaries
- Regulations** means the Securities Regulations 2009
- specified debt securities** means debt securities offered by Fonterra to supplying shareholders
- specified equity securities** means equity securities offered by Fonterra to supplying shareholders
- supplying shareholder** means any person who is, or is to be, a supplying shareholder of Fonterra within the meaning of Part 3 of the Co-operative Companies Act 1996.
- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions

- (1) Fonterra and every person acting on its behalf are exempted from—
- (a) section 37A(1)(a) of the Act in respect of specified equity securities and specified debt securities; and
 - (b) section 37A(1)(c) of the Act in respect of specified equity securities and specified debt securities; and
 - (c) section 54 of the Act in respect of specified equity securities and specified debt securities (other than capital notes); and
 - (d) clauses 1(4), 4 to 10, 12 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Regulations in respect of specified equity securities; and
 - (e) clauses 5 to 12, 16 to 18, and 20 to 22 of Schedule 2 of the Regulations in respect of specified debt securities.
- (2) However,—
- (a) the exemption from clause 26 of Schedule 1 of the Regulations does not apply to a first offer to the public of a class of equity securities of Fonterra; and

- (b) the exemption from clause 20 of Schedule 2 of the Regulations does not apply to a first offer to the public of a class of debt securities of Fonterra.

6 Condition that securities allotted only to supplying shareholders

The exemptions in clause 5 are subject to the condition that the specified equity securities or the specified debt securities (as the case may be) are allotted only to persons who are, or immediately after allotment will be, supplying shareholders of Fonterra.

7 Conditions about investment statement

The exemption in clause 5(1)(a) is subject to the further conditions that—

- (a) an investment statement is sent to every person who requests it within 5 working days of receipt of the request by Fonterra; and
- (b) an investment statement is sent to every person who applies to become a supplying shareholder within 5 working days of receipt of the application by Fonterra; and
- (c) the investment statement is available on Fonterra's Internet site; and
- (d) the investment statement contains a reasonably prominent statement that every applicant for securities who did not receive an investment statement before applying for the securities may, within 10 working days of the date on which the investment statement is sent to the applicant, withdraw their application by written notice to Fonterra.

8 Condition that directors' statement must be attached to investment statement

- (1) The exemptions in clause 5(1)(b), (d), and (e) are subject to the further condition that every copy of the investment statement relating to the offer of the specified equity securities or the specified debt securities (as the case may be) that is distributed by or on behalf of Fonterra more than 9 months after the date of the most recent statement of financial position of Fonterra registered under the Financial Reporting Act 1993 has attached to it, or contained in it, a directors' statement that—
 - (a) complies with subclause (2); and
 - (b) is dated no earlier than 8 months after the date of that statement of financial position; and

- (c) is signed by each director of Fonterra (or his or her agent who has been authorised in writing).
- (2) The directors' statement must contain the following matters:
- (a) particulars of any material matters relating to the offer of specified equity securities or specified debt securities (as the case may be) other than—
 - (i) matters set out elsewhere in the investment statement relating to the offer, the registered prospectus relating to the offer, or the most recent financial statements of Fonterra; and
 - (ii) contracts entered into in the ordinary course of business of Fonterra; and
 - (b) a statement by the directors of Fonterra as to whether, in their opinion, after due enquiry by them, any of the following has materially and adversely changed during the period between the date of Fonterra's most recent statement of financial position and the date of the directors' statement referred to in this clause:
 - (i) the trading or profitability of Fonterra or the Fonterra group:
 - (ii) the value of the assets of Fonterra or the Fonterra group:
 - (iii) the ability of Fonterra or the Fonterra group to pay its liabilities due within the next 12 months.

9 Conditions about financial statements

The exemption in clause 5(1)(b) is subject to the further conditions that it is a term of the offer of the specified equity securities or the specified debt securities (as the case may be) that—

- (a) a copy of the most recent audited financial statements of Fonterra and the most recent audited financial statements of the Fonterra group, being financial statements that comply with, and have been registered under, the Financial Reporting Act 1993, will be attached to, or contained in, every copy of the registered prospectus for the offer that is sent to a person under section 54B of the Act; and
- (b) a copy of the interim financial statements for the most recently completed financial half-year of the Fonterra group, being interim financial statements that comply with the NZ IAS 34 (but need not be audited), will be attached to, or contained in, every copy of the registered prospectus for the

offer that is sent to a person under section 54B of the Act if the specified equity securities or specified debt securities are offered more than 9 months after the date of the most recent audited financial statements of the Fonterra group.

10 Condition about statement of shareholding in lieu of certificate evidencing securities

The exemption in clause 5(1)(c) is subject to the further condition that Fonterra sends, without fee, to each supplying shareholder annually, and within 5 working days of receiving a request from a supplying shareholder, a written statement that sets out—

- (a) the class or classes of specified equity securities or specified debt securities (other than capital notes) (as the case may be) held by that shareholder; and
- (b) the number of specified equity securities or specified debt securities (as the case may be) in each class held by that shareholder.

11 Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2003 revoked

The Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2003 (SR 2003/397) is revoked on the close of 31 May 2012.

12 Class notice does not apply

The Securities Act (Co-operative Companies) Exemption Notice 2011 (SR 2011/59) does not apply to Fonterra in respect of specified equity securities or specified debt securities.

Dated at Wellington this 7th day of March 2012



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 12 March 2012 and expires on 28 February 2017, replaces the Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2003 (**2003 Fonterra Notice**). This notice is on substantially the same terms as the 2003 Notice. However, the exemptions in the notice are from the Securities Act 1978 (**Act**) and additionally the Securities Regulations 2009 (**2009 Regulations**), rather than the Securities Regulations 1983 (**1983 Regulations**).

This notice exempts Fonterra Co-operative Group Limited (**Fonterra**) and every person acting on its behalf, subject to conditions, in respect of specified equity securities and specified debt securities offered by Fonterra to supplying shareholders. The exemptions are from—

- sections 37A(1)(a), 37A(1)(c) and 54 of the Act and clauses 1(4), 4 to 10, 12 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the 2009 Regulations in respect of specified equity securities:
- sections 37A(1)(a), 37A(1)(c) and 54 (other than for capital notes) of the Act and clauses 5 to 12, 16 to 18, and 20 to 22 of Schedule 2 of the 2009 Regulations in respect of specified debt securities.

The effect of the notice is to—

- enable Fonterra to offer specified equity securities and specified debt securities to supplying shareholders using a reduced content, evergreen prospectus:
- exempt Fonterra from the requirement that no securities offered to the public be allotted unless the investor receives a copy of the investment statement before subscribing for the securities on conditions including that an investment statement is sent on request, and to persons who become supplying shareholders:
- exempt Fonterra from the requirement to provide certificates to supplying shareholders on allotment of securities, on the condition that an annual statement of holdings is sent.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant these exemptions because—

- Fonterra is a co-operative company which may offer both equity and debt securities to supplying shareholders. As is the nature of co-operative companies, Fonterra is owned by its supplying shareholders, and Fonterra's principal business is to provide services to its supplying shareholders, and it is generally compulsory for Fonterra's suppliers to acquire securities. Accordingly, security

holders generally have significant knowledge about Fonterra's business, and tend to treat security holding as an incident of doing business with Fonterra. For this reason, co-operative companies, including Fonterra, have traditionally been accorded different legal status and treatment from ordinary companies, including in terms of securities law through class exemptions. Securities law requires that investors receive material information about an offer of securities in a timely manner. The reduced-content prospectus, flexibility relating to the provision of the investment statement, and the securities certificate exemption allows Fonterra, similarly to co-operative companies, to meet the requirements of the law in a cost-effective manner that is appropriate to the nature of its business:

- the exemptions are in some respects slightly broader, and in other respects more restrictive, than those in the class notice that generally applies to co-operative companies. These variations are appropriate in light of particular obligations that Fonterra has under the Dairy Industry Restructuring Act 2001 (**DIRA**). The conditions of this notice recognise the obligations imposed by DIRA and provide relief, whilst ensuring overall that Fonterra meets appropriate securities law disclosure standards:
- this notice continues exemptions provided from the Act previously in 2003 Fonterra Notice, and provides for existing exemptions from provisions of the 1983 Regulations to be provided in respect of equivalent provisions of the 2009 Regulations (with the effect that Fonterra will be able to continue to rely on those exemptions in relation to a new or amended prospectus which is registered after the revocation of the 1983 Regulations):
- in light of the limited application of the exemption to securities offered and allotted to supplying shareholders of Fonterra, and the conditions of the exemptions, which require relevant and timely disclosure, FMA considers that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions, and they will not cause significant detriment to subscribers.

